shown by parol to be a mere security for a debt. If the assignment is made in good faith to secure an existing debt and future advances, the mere fact that the assignor is allowed to check on the assignee, which is a bank, for the surplus after paying the amount for which the assignment was made, will not vitiate the assignment. Taking an absolute assignment as a security for a debt is a mere badge of fraud which may be repelled by evidence showing the *bona fides* of the transaction. For distinction between fraud in law and fraud in fact see opinion.

2. ASSIGNMENTS—*Inconsistent reservations.* If an insolvent debtor makes an assignment of all of his property for the benefit of his creditors, reserving benefits to himself at the expense of his creditors, the assignment will be set aside as fraudulent and void, but this rule has no application to an assignment by a debtor of a part only of his estate, made in good faith for the purpose of raising money or securing existing creditors, reserving the surplus to himself. The law would imply such reservation.

3. ATTACHMENTS—*Non-residents.* One who has dwelt in the State for a year or more, and is still dwelling here, with no intention of leaving, is engaged in constructing public improvements in a city in this State under a contract that will occupy him for an indefinite period, is a registered voter in said city and has done other acts evincing his residence in said city, cannot be said to be a non-resident of the State within the meaning of the attachment laws, although his family live out of the State for the convenient education of his children at special schools.

RUSH'S EX'OR AND OTHERS v. STEELE AND OTHERS.—Decided at Staunton, September 17, 1896.—*Buchanan*, J:

1. TRUSTS AND TRUSTEES—*Loss of funds—Negligence.* The trustee was directed by the court, in a pending suit to lend the trust fund and take as security therefor a deed of trust or mortgage on real estate. He loaned the money as directed, but took as security therefor a confession of judgment, upon which execution issued, but, by the direction of the trustee, the execution was not placed in the hands of the proper officer to be levied, whereby the limitation on the judgment was reduced to ten years. The investment by the trustee was reported to the court and confirmed, and three years after making the investment the trustee was removed, and the general receiver of the court substituted in his stead. The debt was amply secured, but was lost solely by permitting the judgment to become barred by the statute of limitations.

Held: The trustee is not liable for the loss, but the general receiver is. It was the duty of the general receiver to ascertain when the judgment would become barred, and to provide against that contingency, and there is nothing in the facts of this case to exempt him from the performance of that duty.

WILLIAMS v. COMMONWEALTH.—Decided at Staunton, September 24, 1896.—*Keith*, P:

1. CRIMINAL PROCEDURE—*Presence of prisoner—Presumption.* If the record shows that a prisoner was present in court when a motion for a new trial was made, the presumption is that he remained until the court adjourned for the day unless the contrary is made to appear either directly or by necessary implication. When